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Letter dated 17 August 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 9 June 2004 (S/2004/481). The Counter-Terrorism Committee has received the attached fourth report from San Marino submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrei I. **Denisov**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 10 August 2004 from the Permanent Mission of San Marino to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of San Marino to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and has the honour to enclose the fourth report of the Republic of San Marino (see enclosure).

Enclosure

Referring to the letter dated 19 May 2004 written by Gennadv M. Gatilov, Vice-Chairman of the Counter-Terrorism Committee, we are pleased to provide a further progress report following that submitted by the Government of San Marino on 13 August 2003 pursuant to paragraph 6 of Security Council Resolution 1373 (2001):

1. Implementation measures

San Marino adopted a new Law criminalizing terrorism and terrorist financing on 26 February 2004. Copy of said Law (Law No. 28 of 26 Feb. 2004, "Provisions on Anti-Terrorism, Anti-Money Laundering and Anti-Insider Trading") was given to CTC for information pending this progress report by the San Marino Permanent Representative to the United Nations, in March 2004. Here follows a description of relevant provisions and an update on San Marino endeavours in the framework of AML/CFT.

Combating terrorism and organized crime

Art. 1 of Law No. 28/2004 provides for a new article of the Criminal Code (Art. 337 *bis*) criminalizing terrorism or subversion of the constitutional order. Article 337 *bis* reads:

1. *"Anyone promoting, establishing, organising, directing or financing associations that aim at perpetrating violent acts for the purpose of terrorism or subversion of the constitutional order against public or private institutions or bodies either of the Republic, or of a foreign State or international, shall be punished by terms of sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights.*
2. *Anyone participating in such associations shall be punished by terms of fourth-degree imprisonment and third-degree disqualification from public offices and political rights.*
3. *Except for cases of participation and support, anyone providing participants in the associations referred to in the preceding paragraphs with assistance or aid in any form shall be punished by terms of second-degree imprisonment and second-degree disqualification from public offices and political rights.*
4. *The person committing the fact referred to in paragraph 3 above in favour of a close relative shall not be punishable."*

Art. 337 *bis* is essentially based on the 1999 UN International Convention for the Suppression of the Financing of Terrorism - ratified in December 2001 and entered into force in San Marino in April 2002 - in that it incorporates the concepts of "terrorist", "terrorist organization", "terrorist act", and "terrorist financing" as defined in said Convention.

Under Art. 2 of Law No. 28/2004, even if any of the crimes covered by Art. 337 *bis* are committed abroad, the author of such crimes is prosecutable and punishable under the provisions of the San Marino Criminal Code, regardless of whether he is in the same or a different country from the one in which the crime was committed. Terrorism cannot be deemed a political crime (Art. 3), and is included among aggravating circumstances (Art. 4).

Penalties from 2nd to 6th degree imprisonment and from 2nd to 4th degree disqualification, mean respectively imprisonment ranging from 6 months to 20 years, and disqualification ranging from 9 months to 5 years. These are considered to be effective, proportionate and dissuasive sanctions.

Art. 15 of Law No. 28/2004 also provides for special investigative techniques, essentially drawing on the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Yet, with regard to wire and phone tapping for investigation purposes, paragraph 2 stipulates that a relevant special law will have to be submitted within twelve months from the entry into force of Law No. 28/2004.

As San Marino pointed out in previous progress reports, the small size of the country (61 square kilometres) facilitates widespread and accurate controls and patrolling by law enforcement agents, which - together with strict domestic provisions governing the presence of foreigners in the country - makes it virtually impossible for San Marino to be used by terrorists as a hideout or as a location where to plan or organize terrorist acts. Therefore, efforts made by San Marino in combating terrorism are, in practice, aimed at countering terrorist financing. For this reason, San Marino has undertaken to further protect its banking and financial system from such potential threat by strengthening financial regulation and supervision, in line with EU relevant directives and regulation, FATF 40 + 8 Recommendations, UN Resolutions and international best practices.

With special regard to **terrorist financing** and **money laundering**:

- terrorist financing is covered both as a stand alone crime and a predicate offence of money laundering under the San Marino AML Law No. 123/1998, which is based on an "all-crimes approach";
- the wording of Art. 199 *bis* criminalizing money laundering has been amended by Law No. 28/2004 in that money laundering constitutes a "felony offence" (the previous wording was "crime"). Such amendment was simply made to meet the classification of offences under the San Marino criminal law, whereby a "felony" is a serious, intentional criminal offence;
- the knowledge standard under the AML Law also includes "wilful blindness", or "indirect intention". In this regard, previous progress reports submitted by San Marino described the provisions issued by the Supervision Department of the Central Bank (former Office of Banking Supervision) on indicators of suspicious and unusual transactions, that is objective factual circumstances from which the intentional element of the money laundering (and terrorist financing) offence can be inferred, and enhanced customer due diligence rules (OBS Circulars No. 26/1999 and No. 33/2003);

- paragraph 4 of Art. 199 *bis* of the Criminal Code criminalizing money laundering reads "*Any property, as well as legal documents, acts or instruments evidencing title to or interest in such property shall be assimilated to money*", in compliance with the term "funds" as defined in the 1999 UN Convention for the Suppression of the Financing of Terrorism;
- under Art. 147 of the Criminal Code, as amended by the AML Law of 1998 and most recently by Law No. 28/2004, confiscation is value-based;
- Art. 8 of Law No. 28/2004 extends customer identification, record maintenance and reporting requirements of the AML regime to other persons and entities other than banking and financial institutions, in line with Council Directive 2001/97/EC (the "2nd EU Directive") and FATF revised 40 Recommendations; the Supervision Department of the Central Bank will issue provisions addressed to such persons and entities for the implementation of and compliance with these requirements;
- Art. 16 of Law No. 28/2004, provides for the freezing of funds, the term "funds" having the same meaning as described above (*capitals or other financial resources or assets, as well as any account or business relationship held or maintained with the San Marino banking and financial intermediaries*);
- Law No. 28/2004 (Articles 10-14) also provides for new Article 305 *bis* of the Criminal Code which criminalizes **insider trading**.

The newly amended AML legislation does not cover the laundering of "own proceeds", and criminal liability for money laundering (and terrorist financing) has not been extended to legal persons yet.

To conclude this section of the progress report, here follow further updates on the strengthening of regulation and supervision of the banking and financial system.

Last year, Law No. 86/2003 provided for a functional merger between the San Marino Credit Institute and the Office of Banking Supervision to form the Central Bank of the Republic of San Marino, the aims and functions of which were described in the 2003 progress report. The second and completing stage of this merger is expected to be implemented by September 2004. Meanwhile, the supervisory staff increased to 13 at the end of June, and is expected to reach 16 by the end of the year.

In March 2003, San Marino adopted Basel I and has since issued the regulations implementing the related capital adequacy requirements, to be completed as early as possible with the issuance of market risk and derivatives regulations. It is also making efforts to adhere more and more strictly to international best practices, in particular the Basel Core Principles for effective banking supervision.

IMF Art. IV Consultations with San Marino took place this year from 29 April to 11 May, with a thorough review of the San Marino financial sector. During the consultation mission, the San Marino authorities stated an interest in the conduct of a Financial Sector Assessment Program (FSAP) in support of their efforts aimed at improving and promoting

the banking and financial system, which will be translated into a formal request in the near future.

The second report on San Marino by MONEYVAL, a FATF-Style Regional Body within the Council of Europe, is scheduled for discussion and adoption during the MONEYVAL Plenary from 17 to 21 January 2005. The AML regime of San Marino was reviewed during the second round of mutual evaluations in April 2003.

Lastly, the San Marino FIU (Supervision Department of the Central Bank) is expected to join the Egmont Group by mid-2005.

UN Convention against terrorism

San Marino is considering accession to the ten UN Conventions against terrorism to which it is not yet a party, which are:

- 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents
- 1979 International Convention against the Taking of Hostages
- 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft
- 1970 Convention for the Suppression of Unlawful Seizure of Aircraft
- 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
- 1980 Convention on the Physical Protection of Nuclear Material
- 1988 Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
- 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
- 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf
- 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection

The extremely technical nature of these instruments, and the fact that San Marino has neither domestic airports nor commercial civil aviation, require thorough examination by the San Marino authorities prior to undertaking the commitments set forth therein.